

BRB No. 99-0428 BLA

ARLINE D. WELCH)	
(Widow of ROBERT B. WELCH))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Robert D. Kaplan, Administrative Law Judge, United States Department of Labor.

George E. Mehalchick (Lenahan & Dempsey, P.C.), Scranton, Pennsylvania, for claimant.

Helen H. Cox (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant¹ appeals the Decision and Order (98-BLA-0288) of Administrative Law Judge Robert D. Kaplan denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as

¹Claimant is the surviving spouse of the deceased miner who died on October 3, 1996. Director's Exhibit 3.

amended, 30 U.S.C. §901 *et seq.* (the Act). The instant case involves a survivor's claim filed on April 21, 1997.² The administrative law judge found that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's denial of benefits.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Inasmuch as the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Under Section 718.205(c)(2), pneumoconiosis will be considered a substantially contributing cause of the miner's death if it actually hastened the miner's death. *Lukosevich v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

²The miner filed claims for benefits on July 19, 1971, April 27, 1983 and September 4, 1985. Director's Exhibit 15. Each of these claims was finally denied. *Id.* The miner, however, filed a fourth claim on September 30, 1987. *Id.* In a Decision and Order dated June 10, 1994, Administrative Law Judge Ralph A. Romano awarded benefits. *Id.* The miner was receiving benefits at the time of his death. See Director's Exhibit 1.

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's denial of benefits under 20 C.F.R. Part 718. The administrative law judge permissibly found that Dr. Gegwich failed to adequately explain his basis for finding that pneumoconiosis contributed to the miner's death. See *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 4-5; Director's Exhibit 3; Claimant's Exhibit 1. None of the other physicians of record opined that the miner's death was due to pneumoconiosis.³ We, therefore, affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁴

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

³Dr. Spagnolo attributed the miner's death to an acute brain hemorrhage and opined that the miner's sudden death was unrelated to, and not even briefly hastened by, pneumoconiosis. Director's Exhibit 17. Dr. Cander opined that there was no evidence that the miner's black lung hastened his death in any way. Director's Exhibit 19.

⁴Because there is no evidence of complicated pneumoconiosis in the record, the administrative law judge properly found that claimant is precluded from establishing entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304. See 20 C.F.R. §718.205(c)(3); Decision and Order at 3.

MALCOLM D. NELSON, Acting
Administrative Appeals Judge